Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage	)))	WC Docket No. 18-155

DECLARATION OF JAMES GROFT
ON BEHALF OF NORTHERN VALLEY COMMUNICATIONS, LLC

I, James Groft, declare under oath and pursuant to 18 U.S.C. § 1621, that:

1. I am the Chief Executive Officer of Northern Valley Communications, LLC ("NVC"), a CLEC in South Dakota with its principal place of business in Groton, South Dakota.

2. For many years, NVC has provided services to free conference calling and similar voice services and has provided revenue sharing in order to attract and retain those high volume customers.

3. NVC has invested millions of dollars in building and regularly upgrading a sophisticated high-capacity network capable of handling and switching these significant traffic volumes.

4. In response to the FCC's 2011 *Connect America Fund Order*, NVC reduced its tariffed access rates as required by that order.

5. Based on my review of NVC's financial information for the year to date, NVC **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**. This shows that the current access stimulation rules do not produce windfall profits for rural CLECs and that companies like NVC may be in jeopardy if they are deprived of competing for high volume customers that help to absorb the costs associated with maintaining modern telecommunications networks in rural areas.

REDACTED FOR PUBLIC INSPECTION

6. Based on my review of NVC's financial information for the year to date, when the new regulations in the *Access Stimulation Order* takes effect, NVC will immediately become unprofitable because it will lose all access revenues it has historically relied upon, and at the same time become financially responsible for and obligated to provide tandem switching and transport services for the benefit of the IXCs that deliver traffic to its network.

7. Based on existing traffic volumes and rates, I estimate that, had these new access stimulation rules been effective in 2019, NVC would have suffered a **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** loss for the period January through August 2019.

8. In short, the *Access Stimulation Order* would be financially ruinous and wipe out NVC as a company if it continues to provide service to high volume customers, even if NVC has no revenue-sharing agreements in place.

9. In turn, if NVC is financially ruined, its community, that community's citizens, and third parties will also suffer. **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**. NVC's destruction, which will result from the

drastic increase in costs and reduction in revenue in such a short time frame, will imperil all of these other important community services.

10. The Commission's alternative suggestion that high volume service providers start paying not only for the end user telecommunication services they obtain, but also the costs of providing tandem switching and transport, is unreasonable. These service providers will not pay rural LECs for these services, but instead will migrate to larger LECs that can continue to engage in revenue sharing because they have higher volumes of originating traffic and thus would not trigger the terminating-to-originating traffic ratios in the new access stimulation rules. In other words, the *Access Stimulation Order* will eviscerate an entire line of business for NVC while allowing other LECs located in more urban areas to continue providing an identical service for a profit.

11. The *Access Stimulation Order* will severely harm NVC even if NVC discontinues service to high volume customers immediately. The new access stimulation regulations will become effective 75 days after publication in the *Federal Register* and that a carrier will still be considered an access stimulator, and thus required to pay for the IXC's tandem switching and transport services, until it has demonstrated reduced traffic volumes (below the 6:1 terminating-to-originating traffic ratio) for a period of six months. As such, even if NVC immediately disconnects all high volume service providers, it will still be required to incur the expense of tandem switching and transport on traffic terminating to its residential and business customers for a period of at least six months. Thus, during this period, NVC will be deprived of its primary revenue source and required to bear a new burden in the form of obtaining and paying for tandem switching and transport services. The result is that NVC will have to charge an unreasonably high and non-competitive rate to its residential and business customers (which

would likely result in NVC losing a significant number of customers) or incur a significant loss for a period of not less than six months (resulting in a windfall to IXCs, who will pick up and continue to profit off of the conferencing traffic terminated by NVC).

12. The *Access Stimulation Order* will also likely subject NVC to repetitive disputes and nonpayment scenarios even if NVC does not violate the 6:1 terminating-to-originating traffic ratio. According to the *Access Stimulation Order*, the Commission will "encourage [IXC] self-policing of our access stimulation definition and rules" and will allow IXCs to issue disputes to carriers based on the originating and terminating traffic data available to them.[1] Historically, NVC has sent the majority of its originating traffic to only one carrier: Express Communications. Thus, no other IXC would have any basis to understand NVC's terminating-to-originating traffic ratio. However, due to the Commission's encouragement of self-policing by the IXCs, other carriers will still be able to dispute NVC's ratio based on their skewed data and NVC will have no choice but to spend the time and money to defend those actions, forcing it to endure even more financial hardship.

13. In the past, NVC, like many other rural carriers, has had to spend significant time and resources in its battle against IXCs' nonpayment schemes. For example, between July 2014 and May 2018, NVC spent **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** on, and dedicated hundreds of employee hours to, an access charge dispute with AT&T. Under the *Access Stimulation Order* (and the enhanced IXC "self-policing" and ratio disputes the *Order* brings with it), I believe NVC will be forced to dedicate hefty financial and personnel resources to resolving IXC-brought disputes.

---

1 *In re Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations, at 27 ¶ 59 (Sept. 27, 2019) ("*Access Stimulation Order*").

REDACTED FOR PUBLIC INSPECTION

14. Under the *Access Stimulation Order*, NVC will also have to dedicate significant time and resources to analyze and revise its tariff so as to ensure compliance with the new access stimulation rules. This, of course, will require a significant time investment by highly skilled employees and the retention of outside experts and consultants.

15. Moreover, the Commission's other suggestion that its "high cost universal service program provides support to carriers in rural, insular, and high cost areas as necessary to ensure that consumers in such areas pay rates that are reasonably comparable to rates in urban areas,"[2] would not mitigate these consequences because NVC is a CLEC and the Commission has made CLECs ineligible for this support.[3]

16. Given the costs of providing service in rural areas, and the fact that NVC would never be able to compete for *any* high volume customers in the future – including call centers or other businesses that are physically located in NVC's service territory but that generate high volumes of in-bound calls – without being concerned that it would trigger the access stimulation

---

[2] *Access Stimulation Order* at 13 ¶ 29.

[3] *See In re Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, at 17-18 (July 20, 2018) (noting that "[u]nlike the ILECs, [] CLECs were never given access to the cost-recovery mechanisms created in the *Connect America Fund Order*" as "the Commission told the CLECs to fend for themselves"); *see also In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, ¶ 864 (2011) ("We decline to provide an explicit recovery mechanism for competitive LECs. Unlike incumbent LECs, because competitive carriers have generally been found to lack market power in the provision of telecommunications services, their end-user charges are not subject to comparable rate regulation, and therefore those carriers are free to recover reduced access revenue through regular end-user charges. Some competitive LECs have argued that their rates are constrained by incumbent LEC rates (as supplemented by regulated end-user charges and CAF support); to the extent this is true, we would expect this competition to constrain incumbent LECs' ability to rely on end-user recovery as well. Moreover, competitive LECs typically have not built out their networks subject to COLR obligations requiring the provision of service when no other provider will do so, and thus typically can elect whether to enter a service area and/or to serve particular classes of customers (such as residential customers) depending upon whether it is profitable to do so without subsidy.").

rules, I do not believe that NVC will ever be able to recover from the impact of the Commission's rules, nor do I believe NVC will be able to run a profitable business.

17. Moreover, immediately terminating all traffic to free conference calling and similar services will be highly disruptive for the millions of Americans that rely on these services. The Commission's insistence on implementing its new rules in a period of 75 days provides no opportunity for NVC and its customers to develop and execute a reasonable transition plan.

I declare under the penalty of perjury that the foregoing is truthful and correct to the best of my knowledge, information, and belief.

Dated: October 4, 2019

James Groft
James Groft

REDACTED FOR PUBLIC INSPECTION